those of the man who pays him. *Driscoll* v. *Towle,* 181 Mass. 416. See, generally, *Sargent Paint Co.* v. *Petrovitzky* (Ind., 1919), 124 N. E. 881.

NEGLIGENCE PER SE—VIOLATION OF SPEED ORDINANCE—PROXIMATE CAUSE.—A motorcycle rider was injured through the negligence of the driver of an automobile at a street intersection. Both vehicles were exceeding the authorized speed of ten miles per hour. *Held,* the motorcycle rider was guilty of contributory negligence *per se* by violation of the ordinance and could not recover, his negligence being the proximate cause of the injury. *Dowdell* v. *Beasley* (Ala., 1919), 82 So. 40.

The better rule is that violation of such an ordinance is not negligence *per se* but is merely evidence of negligence. *Scott* v. *Dow,* 162 Mich. 636. Some courts have gone so far as to consider such a violation no evidence of negligence. *Ford's Adm'r* v. *Paducah City Ry.,* 124 Ky. 488. However, the failure to stop an automobile at a railroad crossing may be negligence *per se. Earle* v. *P. & R. Ry. Co.,* 248 Pa. 193. So also, the failure to slow down before crossing a street-car track, the presence of which is known, is sufficient evidence on which to direct a verdict. *Westcott* v. *Waterloo etc. Ry. Co.,* 173 Iowa 355. The decision in the principal case is fully supported in many jurisdictions, *Schell* v. *DuBois,* 94 Ohio St. 93, but it is to be justified rather on ground of *proximate cause* than on the ground of negligence *per se,* Cf. 17 MICH. L. REV. 275, 3 COLUMBIA L. R. 344, 10 ib 367, 19 HARV. L. R. 288, 10 N. C. C. A. 820, 13 ib. 982.

NUISANCE—RESPONSIBILITY FOR ACTS OF THIRD PARTIES—INJUNCTION—EXECUTIVE INTERFERENCE—THE GERMAN OPERA CASE.—Plaintiff corporation, organized for the purpose of giving musical performances, had contracted to give a series of operas in German during the season of 1919-1920. There was much public hostility to the proposed project, and, before the first performance, the mayor of the city, on petition of the American Legion, allowed a hearing to those who favored and those who opposed the proposed performances. The opening performances produced riotous demonstrations, which necessitated calling out large bodies of police, and resulted in various severe injuries. The mayor having subsequently prohibited these performances until the peace treaty should be ratified, the plaintiff secured an injunction *pendente lite,* restraining the mayor. This case comes up on a motion of the plaintiff to continue this injunction *pendente lite. Held,* the mayor could prohibit such performances as these, and the court denied the motion of the plaintiff corporation, at the same time vacating the temporary restraining order. *Star Opera Co., Inc.* v. *Hylan et al.* (1919), 178 N. Y. S. 179.

Many jurisdictions admit the fact that an act, innocent in itself, may at times be carried on under such circumstances as to become a nuisance. *Boston Ferrule Co.* v. *Hills,* 159 Mass. 147; *Kissel* v. *Lewis,* 156 Ind. 233; *Cronin* v. *Bloemecke,* 58 N. J. Eq. 313; *Harrison* v. *The People,* 101 Ill. App. 224. These cases show that a lawful act will be enjoined, if and when it becomes a nuisance, either by indictment or by private bill; but the case under discussion differs from these, and is peculiar, in that it is not the acts

of the plaintiff that create the nuisance, but rather the acts of third parties over whom the plaintiff has no control. It is clearly settled in the law of England that "a man is or may be liable to an indictment for attracting, even by something lawfully done on his own premises, a crowd in the street adjoining his premises," *Lyons, Sons Company* v. *Gulliver and The Capital Syndicate, Ltd.*, 78 J. P. 98, 100; *Bettertons' Case,* Holt 538; *Rex* v. *Moore,* 3 B. and Ad. 184; *Rex* v. *Carlile,* 6 Car. and P. 636; *Walker* v. *Brewster,* L. R. 5 Eq. 25; *Inchbald* v. *Robinson and Barrington,* L. R. 4 Ch. 388; *Wagstaff* v. *Edison Bell Phonograph Corp., Ltd.,* 10 T. L. R. 80. See, also, 78 J. P. 170, "NUISANCES BY THEATRE QUEUES—OCCUPIERS ADJOINING THE HIGHWAY." However, in the United States this proposition is not so well settled, and practically the only precedent, in addition to those cited by the court, found in our reports, is *Seastream* v. *New Jersey Exhibition Co.,* 67 N. J. Eq. 178, where Sunday baseball games were temporarily enjoined, when the crowd attracted by them became a nuisance to adjoining property owners. The present case is also peculiar in the way in which the question arises. It is not a suit to enjoin the opera company from producing German opera, but is a motion by the opera company for a continuation of an injunction *pendente lite,* restraining the mayor from interfering with such production,—and the mere fact that this motion was denied would not necessarily mean that an injunction would be given in a suit of the former kind against the opera company. The court recognizes that it is denying the plaintiff the exercise of a right or privilege, but it is not apparent from the report whether the court bases its decision primarily upon the relative unimportance of this privilege as compared with the serious consequences of its exercise, or primarily upon the ground that the court would have enjoined its exercise if suit were brought against the plaintiff seeking such injunction. If the decision rests upon the second ground, it is apparent that the courts of this country are adopting and following a well-settled principle in the law of England. See cases cited, *supra.*

NUISANCE—UNDERTAKING ESTABLISHMENT IN PURELY RESIDENTIAL DISTRICT A "NUISANCE."—Action to restrain defendant from continuing an undertaking establishment in a purely residential district. It was shown that the occupants of adjacent houses were mentally depressed by its presence; that they lived in constant fear of contagion; that property in the vicinity was being decreased in value, and that there was a remote probability of transmission of contagious disease. *Held,* a nuisance under a statute providing that anything such as "to essentially interfere with the comfortable enjoyment of life and property is a nuisance." *Goodrich* v. *Starrett* (Wash., 1919), 184 Pac. 220.

The business of an undertaker is not a nuisance *per se* and the burden of showing that it is a nuisance is on the complainant. *Westcott* v. *Middleton,* 43 N. J. Eq. 478. One ground for the decision in the principal case and in *Densmore* v. *Evergreen Camp No. 147, W. of W.,* 61 Wash. 230, was the mental inquietude and depression caused by the presence of death, the conveying in and out of bodies, the conducting of funerals, etc. It has also been